

ANALYSIS

This ordinance adds Chapter 13.82 to Division 10 of Title 13 - Public Peace, Morals, and Welfare of the Los Angeles County Code, to authorize the seizure and forfeiture of vehicles used in speed contests and exhibitions of speed.

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05/06/05 (Requested)

08/10/05 (Revised)

ORDINANCE NO. _____

An ordinance adding Chapter 13.82 to Division 10 of Title 13 - Public Peace, Morals, and Welfare of the Los Angeles County Code, relating to the seizure and forfeiture of vehicles used in speed contests and exhibitions of speed.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Chapter 13.82 is hereby added to Title 13 - Public Peace, Morals, and Welfare of the Los Angeles County Code to read as follows:

Chapter 13.82

Street Racing – Motor Vehicle Seizure and Forfeiture

SECTIONS:

- 13.82.010 Findings.
- 13.82.020 Definitions.
- 13.82.030 Abatement of Nuisance Vehicle by Seizure and Forfeiture.
- 13.82.040 Vesting of Title.
- 13.82.050 Seizure of Vehicle.
- 13.82.060 Forfeiture and Notice of Intended Forfeiture of Vehicle.
- 13.82.070 Claim Opposing Forfeiture and Court Proceedings.
- 13.82.080 Disposal of Vehicle and Distribution of Proceeds.
- 13.82.090 Stolen Vehicles.
- 13.82.100 Recovery of Monetary Loss.
- 13.82.110 Discretion of the District Attorney.
- 13.82.120 Severability.

13.82.010 Findings.

The Board of Supervisors of the county of Los Angeles has determined that:

- residents of the county of Los Angeles in both urban and rural areas of the county have complained about the nuisances created in their neighborhoods by vehicles that are used in motor vehicle speed contests and exhibitions of speed;
- persons who use their vehicles for motor vehicle speed contests and exhibitions of speed endanger the lives of residents of the county of Los Angeles, create excessive noise that disturbs the peace and quiet of the county's neighborhoods, threaten the rural aesthetic and cultural resources of officially designated scenic corridors, public parkland, and nationally designated recreation areas used by millions of visitors every year, and often bring increased traffic, crowds, litter, drinking in public, urinating in public, gambling, fights, trespassing, graffiti, vandalism, and blight into the areas where the speed contests and exhibitions of speed occur;
- persons who engage in speed contests and exhibitions of speed frequently make alterations to the vehicles utilized by removing environmental restraints, for example, modifying exhaust systems of the vehicles in order to increase the potential speed of the vehicles, thereby polluting the environment and further endangering residents of the county; and

- speed contests, exhibitions of speed, and the vehicles used in those activities are a public nuisance, and the seizure and forfeiture of such vehicles will abate the nuisances caused by these activities in that the vehicles used for these purposes will no longer be available, and furthermore, other persons contemplating engaging in these activities will be deterred from using vehicles for these purposes.

13.82.020 Definitions.

As used in this chapter, the following terms are defined as:

A. "Authorized public officer" is a peace officer with authority to arrest under California Penal Code sections 830 through 830.14, inclusive or as each of those statutes may be amended or reenacted.

B. "Driver" is any person who drives a vehicle.

C. "Exhibition of speed" is a willful act of showing off or displaying a dangerous or imprudent speed in a vehicle on a highway, including, without limitation, excessive acceleration in such a manner as to cause the vehicle's tires to lose traction on the highway, where the presence of another person is known to the driver or may reasonably be anticipated by him or her. In order to constitute an exhibition of speed under this section, there must be spectators or other participants present.

D. "Highway" is a way or place of whatever nature which is used by the public for vehicular travel. It does not include a facility which is specifically designed and legally maintained for the purposes of speed contests or exhibitions of speed.

E. "Speed contest" is a contest where a vehicle is raced on a highway against another vehicle, a clock, or other timing device. In order to constitute a speed contest under this section, at least two vehicles must be assembled or spectators must be present at the event. An event where the time to cover a prescribed route of more than 20 miles is measured, but where the vehicle does not exceed the speed limit, is not a speed contest.

F. "Vehicle" is any transportation device that requires the driver to have in his or her immediate possession a valid driver's license for the appropriate class of vehicle being driven and which transportation device is equipped with a motor.

13.82.030 Abatement of Nuisance Vehicle by Seizure and Forfeiture.

A. Any vehicle used in a speed contest is a nuisance and the vehicle shall be enjoined and abated as provided in this section.

B. Any vehicle used in an exhibition of speed is a nuisance and the vehicle shall be enjoined and abated as provided in this section.

C. Any person or his or her servant, agent, or employee who owns, leases, conducts, or maintains any vehicle used for any of the purposes or acts set forth in this section is responsible for creating a public nuisance.

13.82.040 Vesting of Title.

All rights, title, and interest in any vehicle described in Section 13.82.030 shall vest in the county of Los Angeles upon commission of the act giving rise to the nuisance under this chapter.

13.82.050 Seizure of Vehicle.

A. An authorized public officer may seize a vehicle subject to forfeiture under this chapter upon the issuance of an order by a court having jurisdiction of the vehicle.

An authorized public officer may seize a vehicle subject to forfeiture under this chapter, without court order, in any of the following circumstances:

1. The seizure is incident to an arrest or search under a search warrant; or
2. There is probable cause to believe the vehicle was used in violation of this chapter.

B. An authorized public officer seizing a vehicle under this section shall complete a receipt in accordance with Penal Code section 1412 and deliver it to the person from whose possession the vehicle was seized.

C. An immediate investigation shall be made by the seizing public agency as to any potential claimant to a seized vehicle whose right, title, interest, or lien is of record in this or any other state or appropriate federal agency. Within two business days of the vehicle's seizure, the public agency shall send a notice of seizure to all potential claimants whose right, title, interest, or lien did not arise subsequent to the date and time of seizure of the vehicle, if that person or entity was not previously given a notice of seizure, and to the district attorney for the county of Los Angeles.

D. The notice of seizure shall include the following:

1. The name, address, and telephone number of the agency providing the notice;

2. Identifying information for the vehicle seized and the authority and reason for the seizure;

3. A statement that in order to receive their post-seizure hearing, the potential claimant shall request the hearing in person, in writing, or by telephone within ten calendar days of the date of the notice; and

4. The time in which a claim of interest in the vehicle seized or subject to forfeiture is required to be filed.

E. The seizing public agency shall provide any potential claimants discovered as a result of the investigation set out in subsection C of this section with the opportunity for a post-seizure hearing to determine the validity of the seizure. The post-seizure hearing shall be conducted within two business days of the request for the hearing. The public agency may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who directed or participated in the seizure of the vehicle. Failure of the potential claimant to request or attend a scheduled hearing within the appropriate time frame shall satisfy the post-seizure requirement.

F. A vehicle seized pursuant to this section may be held as evidence in any proceeding brought by the district attorney.

13.82.060 Forfeiture and Notice of Intended Forfeiture of Vehicle.

A. Within 14 days of receipt of the notice of seizure required in Section 13.82.050, the district attorney may pursue the forfeiture of vehicles seized under this chapter, as provided in this section. If the district attorney does not commence forfeiture procedures under this section within that 14-day period, title shall

revert to the owner and the seized vehicle shall be returned to the owner. If the seized vehicle is returned to the owner because the district attorney has not commenced forfeiture procedures within said 14-day period, the county of Los Angeles shall reimburse the public agency which seized the vehicle for the costs associated with the towing, storage, and release of that vehicle.

B. If the district attorney determines that forfeiture of the seized vehicle is warranted, the district attorney shall serve a notice of intended forfeiture upon any person who has an interest in the seized vehicle. The notice shall be served as soon as practicable, but in any event within 30 calendar days of the seizure of the vehicle subject to forfeiture.

C. The notice of intended forfeiture shall be served as follows:

1. By personal delivery or certified mail, return receipt requested, upon any person who has an interest in the seized vehicle as determined pursuant to Subsection 13.82.050C.

2. In the event that the person entitled to service refuses to accept certified return receipt mail or cannot be personally served, service may be made by substituted service. Substituted service may be accomplished by any one of the following methods:

a. By leaving a copy during usual business hours at the recipient's business with the person who is apparently in charge, and by thereafter mailing by first-class mail a copy to the recipient where the copy was left; or

b. By leaving a copy at the recipient's dwelling or usual place of abode, in the presence of a competent member of the household and thereafter mailing by first-class mail a copy to the recipient at the address where the copy was left.

3. If the person entitled to service lives out of state and will not accept certified return receipt mail, then service may be made by first-class mail.

4. If the person entitled to notice cannot be located, or service cannot be effected as set forth in this subsection, service may be made by publication in a Los Angeles newspaper of general circulation. Service shall be deemed sufficient when it is accomplished pursuant to Government Code section 6063.

13.82.070 Claim Opposing Forfeiture and Court Proceedings.

A. A person claiming an interest in the seized vehicle must, within ten calendar days from the date of the notice of intended forfeiture or within 30 calendar days from the date of first publication of the notice of intended forfeiture, file with the superior court of the county in which the vehicle was seized, a Claim Opposing Forfeiture, verified in accordance with section 446 of the Code of Civil Procedure, stating his, her, or its interest in the vehicle. An endorsed copy of the claim shall be served upon the district attorney within ten calendar days of the filing of the claim.

B. If a verified claim is filed in accordance with this section, the forfeiture proceeding shall be set for hearing within 30 calendar days from the date the claim is filed with the court. The district attorney shall file a petition for forfeiture with the court within ten calendar days of service of the claim upon the district attorney. A copy of the petition shall be served upon the claimant.

C. The hearing shall be before the superior court of Los Angeles County. The provisions of the Code of Civil Procedure shall apply to proceedings under this section unless otherwise inconsistent with the provisions or procedures set forth in this section. However, in proceedings under this section, there shall be no joinder of actions, coordination of actions, except for forfeiture proceedings, or cross-complaints, and the issues shall be limited strictly to the questions related to this section. Trial shall be by court or jury.

D. With respect to vehicles described in Subsection B of Section 16.82.060 for which forfeiture is sought and as to which forfeiture is contested, the district attorney shall have the burden of proving by a preponderance of the evidence that the vehicle was used as set forth in Section 13.82.030.

E. Upon proof that the vehicle was used for any of the purposes set forth in Section 13.82.030, the court shall declare the vehicle a nuisance and order that the vehicle be forfeited, sold, and the proceeds distributed as set forth in Section 13.82.080. The court may make a different distribution of the proceeds if the court finds that the claimant did not know that the vehicle was used for a purpose that constitutes a violation of this chapter.

F. If the court rules that the vehicle shall not be forfeited or the district attorney abandons the forfeiture proceedings prior to a ruling by the court, title to the vehicle shall revert to the owner, the vehicle shall be returned to the owner, and the county of Los Angeles shall be responsible for payment of the costs associated with the towing, storage, and release of that vehicle.

G. If no claims are timely filed, the district attorney shall prepare a written declaration of forfeiture of the vehicle to the county. A written declaration of forfeiture signed by the district attorney under this section shall be deemed to provide good and sufficient title to the forfeited vehicle. The proceeds from the disposal of the vehicle declared forfeited by the district attorney shall be distributed in accordance with Section 13.82.080. The district attorney ordering forfeiture pursuant to this section shall provide a copy of the declaration of forfeiture to any person who received notice of the forfeiture proceedings.

13.82.080 Disposal of Vehicle and Distribution of Proceeds.

The proceeds of the sale of any vehicle forfeited to the county, or if cash is paid as settlement in lieu of forfeiture of the vehicle, the proceeds of the settlement shall be distributed and used in decreasing order of priority as follows:

- A. To pay costs associated with the towing, storage, and release of any vehicle seized under this section.
- B. To pay costs associated with the sale of the vehicle.
- C. To pay a lien holder of record, if any, up to the amount of his, her, or its unsatisfied lien on the vehicle.
- D. The remaining funds shall be distributed as follows:
 - 1. First, to the district attorney in an amount equal to all expenditures, other than personnel costs or costs provided for in subsections A, B, and C of this section, made or incurred in connection with the enforcement of this chapter, including but not limited to, costs for equipment, investigation, supplies, litigation, insurance, and

liability resulting from enforcement of this chapter and costs of publication of the notices set forth in Section 13.82.060.

2. Second, to the public agency which seized the vehicle under this chapter in an amount equal to all expenditures, other than personnel costs or costs provided for in subsections A, B, and C of this section, made or incurred in connection with enforcement of this chapter, including but not limited to, costs for equipment, investigation, and supplies related to the enforcement.

3. Of any remaining funds, 60 percent to the seizing public agency, 25 percent to the district attorney, and 15 percent to the county of Los Angeles general fund, provided that such funds shall be used for the purpose of abating or deterring speed contests and exhibitions of speed and may not be used for personnel costs.

E. For budgeting purposes, funds attributable to this ordinance shall not be considered anticipated general fund revenue.

13.82.090 Stolen Vehicles.

A vehicle that has been reported stolen prior to a seizure under this chapter shall not be subject to forfeiture unless the identity of the registered owner cannot be reasonably ascertained or the registered owner fails to redeem the vehicle within 60 days of the seizure. The registered owner of the vehicle may claim the vehicle upon payment of tow storage and release charges, provided the vehicle is not subject to any holds for traffic or parking violations and the vehicle registration is current.

13.82.100 Recovery of Monetary Loss.

Nothing in this section shall preclude an owner of a vehicle who suffers a monetary loss from the forfeiture of a vehicle under this chapter from recovering the amount of the actual monetary loss from the person who committed the act giving rise to forfeiture under this chapter.

13.82.110 Discretion of the District Attorney.

From the time the district attorney receives the notice of seizure referred to in Section 13.82.050 to the final decision in any subsequent forfeiture proceedings, the district attorney has discretion to resolve all proceedings under this chapter on such terms as may be, in the judgment of the district attorney, in the best interests of the county of Los Angeles.

13.82.120 Severability.

If any provision of this chapter is found to be invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

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